

**Minutes of Meeting
Grafton Planning Board
July 13, 2009**

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A regular meeting of the Grafton Planning Board was held on Monday, July 13, 2009 in Conference Room A at the Grafton Municipal Center, 30 Providence Road, Grafton, MA. Present for the meeting were Chairman Bruce W. Spinney III, Vice-Chairman, Robert Hassinger, Clerk Peter Parsons, Heath Christensen and Stephen Qualey. Staff present were Town Planner, Stephen Bishop and Assistant Planner Ann Morgan.

Chairman Spinney called the meeting to order at 7:00 p.m., welcoming everyone, specifically his daughter Katherine.

ACTION ITEM 1-A - APPROVAL NOT REQUIRED PLAN - ANR 2009-8 JOHN J. & ARLENE F. ADAMS - 23 GEORGE HILL ROAD

Mr. Bishop distributed copies of the ANR plan to the Board and noted that he had left a message for Kevin Jarvis of Jarvis Land Survey, Inc. drawing to his attention that the locus map was not on the plan and that the plan did not show the required areas with regard to Section 3.1.3.6 of the Subdivision Rules & Regulations. Mr. Bishop also submitted copies of the Assessor's maps, allowing the Board to see what requirements were omitted from the ANR plan. Mr. Bishop informed the Board that he had submitted the application and plan to Town Counsel, who concurred with his opinion, and returned the attached letter of response stating the plan does not appear to be eligible, as every lot created did not have the required frontage on a public way.

MOTION by Mr. Hassinger, **SECOND** by Mr. Qualey, that on the advice of Town Counsel, to deny the applicant's request for endorsement of the ANR plan for all the reasons stated by Town Counsel. **MOTION** carried unanimously 4 to 0, with Mr. Parsons absent.

Mr. Parsons joined the Planning Board at 7:09 p.m.

ACTION ITEM 1-B - CONSIDER DECISION - MODIFICATION OF DEFINITIVE PLAN APPROVAL - "CORTLAND MANOR" SUBDIVISION - EXTEND CONSTRUCTION DECISION

MOTION by Mr. Hassinger, **SECOND** by Mr. Parsons, to make favorable Findings for F-1 through F-10. **MOTION** carried by roll call vote: Parsons-aye; Hassinger-aye; Spinney-aye.

MOTION by Mr. Hassinger, **SECOND** by Mr. Parsons, to deny the applicant's written request for an extension to the construction deadline, after consideration of the exhibits submitted and based on the Findings stated within the Draft Decision. **MOTION** carried by roll call vote: Parsons-aye; Hassinger-aye; Spinney-aye.

Chairman Spinney announced that a letter had been received today from Hilltop Properties, LLC requesting a continuance of their public hearing, but that the Board would not be opening the hearing until the applicant's engineer, Michael Weaver, returned from his meeting with the Sewer Department.

**ACTION ITEM 1-C - REQUEST FOR PLANNING BOARD ENDORSEMENT –
“DENDEE ACRES” DEFINITIVE PLAN**

Mr. Bishop informed the Board that Attorney LeBlanc had submitted an abundance of information for the benefit of the newer members of the Board, so that they could acquaint themselves with the history of the subdivision.

Attorney LeBlanc briefly reviewed the status of the subdivision, noting that in September of 2008 his client had filed for a modification of the Definitive Plan for two small issues consisting of an extension of the time to endorse and correcting an error by the engineer on a the designation of a 172 square foot piece of land to the open space. Attorney LeBlanc assured the Board that the mylars have been modified, reviewed by Graves Engineering and are ready for the Planning Board to sign

Mr. Hassinger asked Mr. Bishop if he recommended endorsement. Mr. Bishop stated he did recommend endorsement.

MOTION by Mr. Hassinger, **SECOND** by Mr. Parsons, to grant the applicant's written request for endorsement of the mylars for “Dendee Acres” subdivision. **MOTION** carried unanimously 5 to 0.

Mr. Bishop requested the Board sign the mylars prior to leaving the meeting this evening to enable the applicant to pick up the mylars tomorrow morning.

**DISCUSSION ITEM 2-A – “BRIGHAM HILL ESTATES” SUBDIVISION – OPEN
SPACE**

Attorney Mark Donahue, representing his client Brigham Hill Estates, LLC and first mortgage holder Colonial Capital, informed the Board that with regard to the “Brigham Hill Estates” Definitive decision, Condition #35, the developer is required to submit plans for endorsement within six months of the approval. Attorney Donahue explained to the Board that they had encountered some difficulties in obtaining Conservation Commission approval, filed a NOI and the public hearing is still ongoing with disagreement on the roadway previously designed and approved to accommodate the utilities, etc. Attorney Donahue added that another condition of approval was the transfer of the open space parcel of 90+acres to the Land Trust, which is required to be completed before the plans can be endorsed. Attorney Donahue also noted he is still drafting the open space document which will be given to Ken Holberger of the Grafton Land Trust for their approval.

Attorney Donahue stated that for these two reasons he is requesting a minor modification of a 90-day extension period for the endorsement of the Definitive plans for the subdivision. Attorney Donahue pointed out that if his client were to reapply, it would take approximately the same amount of time to get through the process also.

Chairman Spinney questioned who was actually in charge of Brigham Hill Estates. Attorney Donahue stated that the LLC is held by Jon LeClaire and that his client Colonial Capital is the holder of the first mortgage.

Mr. Hassinger expressed concerns about extending any deadlines for projects associated with Jon LeClaire, due to the current default status of several of his projects in Town and no desire for additional problems. Mr. Hassinger noted there have been concerns in the past for persons who have significant delays in commencing their approved projects, giving the appearance they are trying to extend their zoning protection.

Attorney Donahue stated that was not the case and he was confident they will reach an agreement with Conservation, the Land Trust and will be back before the Planning Board within 90 days.

MOTION by Mr. Hassinger, **SECOND** by Mr. Parsons, to make the determination that the applicant's written request for a 90-day extension to Condition #35 is a minor modification. **MOTION** carried unanimously 5 to 0.

MOTION by Mr. Hassinger, **SECOND** by Mr. Parsons, to grant the applicant's written request for the minor modification to Condition #35. **MOTION** carried unanimously 5 to 0.

Chairman Spinney informed the audience about the request for continuance correspondence from Hilltop Properties LLC and stated the Board was waiting for Mike Weaver of Guerriere & Halnon to return from the Sewer Department meeting to report their status to the Board.

DISCUSSION ITEM 2-B – "OAKMONT FARMS" SUBDIVISION

Mr. Bishop informed the Board that he had forwarded to them a letter from Town Counsel regarding the history and current status of the "Oakmont Farms" subdivision. Mr. Bishop noted the subdivision is essentially in limbo with its current status since there have been no as-built plans or determination of completeness filed with the Planning Office making it impossible to determine if there are any additional outstanding issues.

Mr. Bishop added that Town Counsel has suggested that he ask the Planning Board to consider scheduling a public hearing to find whether the developer is in default of the subdivision. Mr. Bishop noted that this also gives the developer a chance to return to the table to discuss the status of the subdivision.

MOTION by Mr. Hassinger, **SECOND** by Mr. Parsons, to direct Staff to advertise a public hearing for possible default with the developer of the “Oakmont Farms” subdivision.

DISCUSSION: Mr. Hassinger noted that Town Counsel’s letter was very good and he was unaware himself that the Town had assumed the legal burden for the sewer easement from the abutter.

Mr. Christensen inquired who developed the subdivision and was told John Callahan & Sons, Inc.

Mr. Bishop noted the Town still holds a bond for just over a half million dollars and that the subdivision is well advanced, with the fence easement issues and the developer’s refusal to acknowledge the sewer easement expenses being the two major issues. Mr. Bishop added Town Counsel has made numerous unsuccessful attempts to address the sewer easement issue with their Counsel.

MOTION carried unanimously 5 to 0.

MINUTES OF PREVIOUS MEETINGS

MOTION by Mr. Hassinger, **SECOND** by Mr. Parsons, to approve the open session minutes of June 22, 2009 as drafted. **MOTION** carried unanimously 5 to 0.

STAFF REPORT

Mr. Bishop informed the Board that Travelers Indemnity had acknowledged receipt of his letter to them with regard to the surety bond being held for “Cortland Manor” subdivision. Mr. Bishop stated he would have a definite update for the Board at the next meeting on what it will require to obtain funds for the subdivision default.

Mr. Bishop also noted the Town has received \$200,000.00 for the Brownfields Assessment Project through the DEP, which will focus on the Fisherville Mill site, specifically the park area.

Mr. Bishop added that he had forwarded a Memorandum of Agreement to the Board of Selectmen to move things along and that he has been notified there will be a political event in August whereby the Lt. Governor will be coming to the Community House in South Grafton to make an announcement of the award.

Mr. Bishop remarked that there is also the possibility of a federally assistance program of approximately a half million to one million dollars to be awarded through the L.U.S.T. program, acronym for Leaking Underground Storage Tanks

Mr. Weaver returned to the Planning Board meeting at 7:44 p.m.

SP 2009-6 HILLTOP PROPERTIES, LLC (APPLICANT/OWNER) – “HILLTOP PLAZA” – 116 MILFORD ROAD

Chairman Spinney opened the public hearing and asked the will of the Board on whether to take testimony from the abutters present or grant the applicant's written request to continue the public hearing to July 27 without taking any testimony.

Mr. Weaver requested the Board grant the request to continue, stating he did not have the final review of the Traffic Study from Graves Engineering, due to a lack of funds available in the applicant's peer review account, and that he was still trying to secure written approval from the Sewer Department.

Mr. Hassinger stated he wished to address the petition that had been submitted to the Planning Office in the afternoon, in hopes the applicant will be able to address all of the issues on the petition by the next meeting.

Mr. Parsons wished to note that this petition was delivered to the Planning Office today and was not copied to the developer, which is directly in conflict with the dialog the Board had asked all abutters to demonstrate with the developer in the spirit of good faith.

Chairman Spinney informed the abutters he would like to see them go directly to the developer with their issues and not use the Planning Board as a middle man in this hearing. Mr. Spinney expressed concerns to Mr. Weaver of putting the Board in a difficult position with the discontent of the abutters and being unprepared with key information for this public hearing.

Mr. Hassinger suggested Mr. Weaver let Mr. Addeo know about the petition discussed tonight and that he is expected to address all of these points at the next meeting.

Mr. Weaver stated that his client was merely developing the site as it is zoned.

Mr. Hassinger pointed out to Mr. Weaver that some allowed uses may not be compatible with the surrounding district, which is exactly why there is the permitting process through the Planning Board to address these issues. Mr. Hassinger suggested Mr. Addeo take these concerns seriously and return to the Planning Board ready to address all of the issues.

The Board continued to discuss whether they should open the public hearing to testimony or grant the requested continuance.

MOTION by Mr. Parsons to grant the applicant's written request to continue the public hearing to July 27, 2009

There was no second to Mr. Parson's motion.

Mr. Qualey stated the Board could grant the continuance with the condition that the key pieces of information required by the Board are to be available by the next Board meeting.

Chairman Spinney noted the Board cannot close the public hearing with critical information outstanding and a vote is needed to take testimony or continue the hearing. Mr. Bishop added that the discussion has expanded into a public hearing due to the actions of the Board.

MOTION by Mr. Hassinger, **SECOND** by Mr. Qualey, to deny the applicant's written request to continue the public hearing. **MOTION** carried 3 to 1 by roll call vote: Parson-no; Hassinger-aye; Spinney-aye; Qualey-aye. Mr. Christensen was not eligible to vote.

Chairman Spinney read aloud the itemized concerns from the petition and asked Mr. Weaver to attempt to address some of the concerns for those present.

Mr. Weaver stated that One: The applicant was developing within the bylaw for an OLI zoning district, an area not zoned Residential; Two: With regard to the long construction period, the applicant has planned phases, with no intent to have it vacant; Three: The Traffic Impact Assessment dealt with the traffic on Milford Road, showing the level of service from B to C with a delay less than 2 seconds which is not significant; Four: The lack of demand for commercial services within the current strip mall on Providence Road – there are two tenants seeking to locate in that mall at this point.

Chairman Spinney asked Mr. Weaver if he foresees any blasting and was told he does not foresee any blasting for the applicant's site. Chairman Spinney also asked about what plans Mr. Addeo has for the land if the project carries on for years and was told that Mr. Addeo will continue haying the fields as is done now.

Jennifer White of 12 Seaver Farm Road requested the Board require a stronger confirmation from Mr. Addeo regarding the blasting issue. Ms. White also asked the Board to consider the Traffic Impact Assessment to include the issue of the blind turn out of Seaver Farm Road towards Upton, noting that the line of sight is very poor. Ms. White also pointed out that several of Grafton's long time experienced developers are going "belly-up" and the viability of a new developer should be a concern for the Town if the project ends up halted half way through becoming vacant space with no resolution.

Chairman Spinney responded that the Planning Board is governed strictly by Massachusetts General Laws and as long as the developers are within current by-laws, the Board cannot hold past performance against them.

Pearl Litterer of 5 Blackstone Lane expressed traffic concerns to the Board, specifically foot traffic along Milford Road which has no sidewalks, and asked whether the Traffic

Impact Assessment included the foot traffic. Mr. Weaver informed Ms. Litterer the study only included vehicular traffic.

Mr. Parsons requested all parties involved try to approach this project with a perspective of fairness and attempted point out the huge disparities in the discussion; comparing persons concerned with vacant lots while another person is stating concerns over increased volumes of foot traffic/vehicular traffic; and the issue of blasting was okay when the homes were being built, but not okay for this commercial project.

Mr. Hassinger cited Section 1.5.5.g of the Zoning By-Laws, stating that a part of the conditions for granting special permits is a consideration of the general compatibility with the adjacent properties and other property in the district. Mr. Hassinger noted for the record that he would like to see the developer come forward with suggestions/ideas to make an effort to bridge the gap and to mitigate some of the concerns between all involved.

Michael Braun of 4 Seaver Farm Lane informed the Board that the developer has stated he has had meetings with the abutters, but he lives only a few homes in from Milford Road and has never been made aware of any meetings being conducted.

Allison Sanborn of 38 Cherry Lane explained to the Board that this group of abutters present does not have any organizational ties and are not really sure how they should go about making themselves heard, but are trying to do this with the petition. Mr. Sanborn stated most of the abutters are relying on the Planning Board's expertise, with their knowledge and awareness of the laws to guide them on right path.

Chairman Spinney remarked that the petition was a perfect way to deal with the situation, but that this kind of information needs to be submitted to the developer also, so that he is not coming to a Planning Board meeting and being broadsided.

Mr. Parsons suggested people avail themselves of the public records in the Planning Office and Staff who can answer any questions you may have and suggestions of how to handle situations.

Chairman Spinney suggested trying the on-line link for the Planning Department to find the information you are looking for or emailing the Planning Department with a specific question or concern.

Mr. Qualey asked Mr. Weaver if the developer was planning on building the project and then securing the businesses, or securing the businesses and then building the buildings. Mr. Qualey also informed the abutters that there is a big difference between a "bar" of alcohol service only and a bar or lounge area within a restaurant serving alcohol. Mr. Qualey also reminded the abutters that all liquor/pouring licenses are issued by the Board of Selectmen, depending on if they are available and for whom.

Chairman Spinney informed Mr. Weaver to come to the next meeting with a presentation, being as specific as possible on what uses they are considering, as the Board expects more detail on the uses. Chairman Spinney stressed that the Board wants to know as much information as possible on what the developer's plans are.

Mr. Parsons stated additionally it would be very prudent for the developer to schedule a community meeting with the residents or representatives.

Mr. Hassinger requested Mr. Weaver be prepared at the next meeting to present and submit in writing all comments and conditions to be considered by the Board.

Mr. Sanborn thanked the Board for taking the time to deal with the residents and the issues.

Michael Braun of 4 Seaver Farm Lane stated that at the last meeting he understood that there were certain uses the Planning Board could deny or approve.

Mr. Hassinger explained that if the applicant agrees, the Board could put limitations on the permit, but that nothing can be done arbitrarily,

Mr. Bishop added that in clarifying the information in the Zoning By-Laws, the uses are stated that are available for the OLI district; the Board will look at the uses, but the court imposes a reasonably high threshold for specific findings against not granting a special permit for the use.

Mr. Hassinger noted it was much better to reach a compatible agreement before a decision is handed down.

MOTION by Mr. Qualey, **SECOND** by Mr. Parsons, to continue the public hearing to July 27, 2009 at 7:30 p.m. **MOTION** carried unanimously 4 to 0.

Mr. Bishop reminded the Board to stop and sign the "Dendee Acres" Definitive Plan mylars before leaving.

MOTION by Mr. Hassinger, **SECOND** by Mr. Qualey, to adjourn the meeting. **MOTION** carried unanimously 5 to 0.

The meeting was adjourned at 8:37 p.m.

A handwritten signature in black ink, appearing to read 'Peter Parsons', written over a horizontal line.

Peter Parsons, Clerk